

(16,966.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 381.

THE STEAMER "GUIDO," JULIAN DE ORMAECHEA,
CLAIMANT, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE SOUTHERN DISTRICT OF FLORIDA.

INDEX.

	Original.	Print.
Libel.....	1	1
Order for attachment and monition	1	1
Attachment and return.....	2	2
Monition and return.....	3	2
Claim of Julian Ormaechea.....	4	3
Test affidavit.....	5	4
Exhibit A—Proclamation.....	10	7
Motion for further proof and order denying same	12	8
Abstract minutes of court.....	13	8
Decree.....	14	10
Abstract minutes of court.....	15	10
Assignment of errors.....	16	10
Petition of appeal and order allowing same	17	11
Bond on appeal.....	18	12
Citation and proof of service.....	20	13
Order on claim for cargo	21	13
Affidavit and notice of motion to sell in New York.....	22	14

1 In the District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA }
 vs. } Prize.
 THE GUIDO. }

To the Honorable James W. Locke, judge of the district court of the United States for the southern district of Florida:

The libel of Joseph N. Stripling, attorney of the United States for the southern district of Florida, who libels for the United States and for all parties in interest against the steam vessel Guido, her tackle, apparel, furniture, and cargo, in a cause of prize, alleges:

That, pursuant to instructions from the President of the United States, Capt. Nicoll Ludlow, of the United States Navy, in and with the United States ships of war the "Terror," "Machias," and "Foote," her officers and crew, did on the 27 day of April, in the year of our Lord one thousand eight hundred and ninety-eight, subdue, seize, and capture on the high seas, as prize of war, the said Guido, with a valuable cargo on board of the same, and that the said ship and cargo have been brought into the port and harbor of Key West, in the State of Florida, where the same now are, within the jurisdiction of this court, and that the said vessel and cargo are lawful prize of war and subject to be condemned and forfeited to the United States as such.

Wherefore the said attorney prays that all persons having or claiming any interest in said vessel or cargo may by the proper process of this court be duly notified of the allegations and prayers of this libel and cited to appear and claim the same; that the nature, amount, and value of said cargo may be determined, and that, on proper proofs being taken and heard and all due proceedings being had, the said Guido, together with her tackle, apparel, furniture, and cargo, may on the final hearing of this cause, by the definitive sentence and decree of this court, be condemned, forfeited, and sold as a prize of war and the proceeds distributed according to law.

(S'd)

J. N. STRIPLING,
U. S. Attorney, S. D. of Florida.

Let attachment and motion issue as prayed, returnable 14th day of May, A. D. 1898, at 10.30 a. m.

Entered as of course.

(S'd)

E. O. LOCKE, *Clerk,*
 By J. OTTO, *D'y Clerk.*

(Endorsed:) Filed April 28th, 1898. (S'd) E. O. Locke, clerk.

2 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

You are hereby commanded forthwith to attach, seize, and take into your custody the Spanish steamer Guido and cargo, wheresoever the same may be found within your precincts, and the same you are required to keep until the further order of this court, to answer the claim of the United States for prize.

And how you shall have executed this precept make known to the said court, at the court-rooms, in Key West, the 14th day of May, A. D. 1898, at 10.30 o'clock a. m., by a return hereof with your certificate of execution hereon written.

Witness the Honorable James W. Locke, judge of the said court, at Key West, in said district, this 28 day of April, [SEAL.] in the year of our Lord one thousand eight hundred and ninety-eight, and Independence of the United States the hundred and twenty-first.

(S'd)

E. O. LOCKE, *Clerk.*
J. OTTO, *D'y Clerk.*

(Endorsed :) Received the within writ of attachment April 28th, 1898, and duly executed as within commanded by attaching and taking into custody the Spanish steamship Guido. (S'd) John F. Horr, U. S. marshal, so. dist. Fla., (S'd) by Alfred Atchison, deputy marshal. Filed April 28th, 1898. (S'd) E. O. Locke, clerk.

3 UNITED STATES OF AMERICA :

District Court of the United States, Southern District of Florida.

The President of the United States to John F. Horr, Esq., the marshal of the United States for the southern district of Florida, Greeting :

Whereas on the 28th day of April, A. D. 1898, the United States of America, by their proctor, Joseph N. Stripling, Esq., filed in the office of the clerk of said court their libel against the Spanish steamer Guido in a cause of prize, civil and maritime, alleging in substance that she was captured by the U. S. S. Terror, U. S. S. Machias, and U. S. torpedo boat Foote on April 27th, 1898.

Wherefore the said libellant pray- that the usual process of attachment may issue against the said steamer Guido; that monition may issue, citing all parties having or claiming any interest or property in said steamer Guido to appear and answer upon oath all and singular the matters aforesaid, and that this court will be pleased to decree to the libellant the proceeds of said prize for services in said cause, and that the said steamer Guido may be condemned and sold if to pay said prize money, with costs, charges, and expenses, and that the libellant may have such other and further relief in the premises

as in law and justice *he* may be entitled to receive; and whereas the judge of said court has ordered that attachment and monition be issued as prayed, returnable on Saturday, the 14th day of May, A. D. 1898:

Now, therefore, you are hereby commanded forthwith to cite and admonish all persons whomsoever having any right, title, claim, or interest in or to the said steamer Guido to appear at an admiralty session of said court, to be held in the court-rooms of said court, at Key West, in said district, on Saturday, the 14th day of May, A. D. 1898, at 10.30 o'clock in the forenoon of that day, to show cause, if any they have, why prize money should not be decreed according to the prayer of the libellant, and to attend upon every session of said court from that time held until a final decree shall be rendered in the premises.

And this you are required to do by serving on the master of said vessel a true copy hereof, and by posting two such other copies in the most public — of Key West.

And how you shall have executed this precept make known to this court by a return hereof on or before the 14th day of May aforesaid, with your certificate of execution hereon written.

Witness the Hon. James W. Locke, judge of said court, at Key West, in said district, this 28th day of April, in the year [SEAL.] of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the hundred and twenty-first.

(S'd)

E. O. LOCKE, *Clerk*,
By J. OTTO, *D'y Clerk*.

(Endorsed :) Received the within writ of monition April 28th, 1898, and duly executed it on the same day by reading to the master of the S. S. Guido and posting two copies as within commanded. (S'd) John F. Horr, U. S. marshal, so. dist. Fla.. (S'd) by Alfred Atchison, deputy marshal. Filed April 29th, 1898. (S'd) E. O. Locke, clerk.

4 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

And now comes Julian de Ormaechea, master, and as such the lawful bailee of the steamer Guido, and, intervening as such bailee for the interests of the owners of the said steamer, according to the annexed test affidavit, appears before this honorable court and makes claim to the said steamer, her engines, etc., as the same are attached by the marshal, under process of this court, at the instance of the United States of America, under a libel against said steamer, her cargo, etc., as prize of war, and he avers that the said steamer was not and is not lawful prize, and *and* he prays on behalf of the owners of the said

steamer, for and in behalf of whom he is duly authorized to make this claim, to be permitted to defend accordingly, and to show cause, pursuant to the terms of the monition herein issued and served upon the said steamship and upon the said master, as bailee, why the said steamship, her engines, etc., were not liable to be treated as enemy's property at the time and place and under the circumstances of the alleged capture, and why she would not be condemned as lawful prize of war, but should be restored, with damages and costs.

JULIAN DE ORMAECHEA.

Sworn to before me this May 23d, 1898.

[SEAL.]

J. OTTO, *Dep. Clerk.*

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON, *Proctors.*

5 District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} Test Affidavit.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

COUNTY OF MONROE,
State of Florida, Southern District of Florida, } ss:

Julian de Ormaechea, being duly sworn, deposes and says that he is a citizen of the Kingdom of Spain; that his home is in Nundaca, in the province of Biscay, and that he is master of the steamer Guido, proceeded against in this action, and has been master of said steamer for four months last past. Previous to becoming master of the Guido he was an officer or master of vessels running under the management of G. H. Fletcher & Company, hereinafter referred to, for fifteen years.

Deponent further says that the said steamer Guido was built in Belfast, Ireland, in 1883, at or about which time a register for her was taken out in Spain, and she has since carried the flag of Spain and hailed from the port of Bilbao, Spain, where she has been registered in the name of Compania la Flecha, but has at all times been under the management of the house of G. H. Fletcher & Company, of Liverpool, England.

Deponent upon information and belief, such information having been acquired by communications from England since the examination of deponent in *preparatorio*, further says that the Compania la Flecha is a corporation organized and existing under and pursuant to the laws of the Kingdom of Spain,

the capital being divided into 1,000 shares, of which 200
6 shares are registered in the names of William Rudolph Peter Jackson, member of the copartnership firm of G. H. Fletcher & Company, of Liverpool, England; 200 shares in the name of Thomas Hughes Jackson, of Liverpool, England; 200 shares in the name of Jose Serra y Font, of Barcelona, Spain;

200 shares in the name of Raimundo Real de Assua, of Bilbao, Spain, and 200 shares in the name of Ramon Real de Assua, of Bilbao, Spain, the said William Rudolph Peter Jackson and Thomas Hughes Jackson being domiciled in England and subjects of the United Kingdom of Great Britain and Ireland, and the said Jose Serra y Font, Raimundo Real de Assua, and Ramon Real de Assua being domiciled in Spain and subjects of the Kingdom of Spain; that while the shares of Compania la Flecha have been registered as aforesaid such registration has been merely formal, and the certificates of shares, the possession of which under the constitution of the company establishes the ownership thereof, have been for many years last past possessed by the said Thomas Hughes Jackson, who has been and still is the true and lawful owner of all the said 1,000 shares for value and thereby the sole beneficial owner of the said steamer Guido.

Deponent further states, upon like information and belief and by due authority of the said Thomas Hughes Jackson, that the said steamer has been sailed under the Spanish flag purely and solely for commercial reasons, her trade lying regularly in the line of Europe, Cuba, and the United States, and there being discriminations in favor of vessels carrying the Spanish flag in respect of commerce with the colonies of Spain in consideration of dues paid by such steamers to the government of Spain, and that it has been the purpose and intent of the owner of the Guido to maintain her in such trade only so long as such trade might be lawfully and peacefully carried on, and to withdraw her from Spanish registry and from under the Spanish flag and restore her to British registry and the flag of Great Britain whenever such trade

7 should be disturbed; that it has been and is his purpose to make such transfer because of the pending war between the United States and the Kingdom of Spain, but that no opportunity therefor has been afforded, the steamer being at sea at the time of the outbreak of hostilities and not being in any port thereafter up to the time of her capture.

Deponent further says that he has known the Guido from the time she was built, and that during such time she has been engaged in the transportation of cargo for hire under the management of the said house of G. H. Fletcher & Company, of Liverpool. Her voyages have begun in Europe, where she has taken such cargo as was procurable for Cuban ports, from which ports, upon discharge of such cargo, she has proceeded to ports of the United States, where she has taken cargo for her port of final destination in Europe, either under charter or on the berth, such cargo from the United States being the principal cargo of the round voyage, and the round voyage occupying about three months, and she making in regular course about four voyages a year.

Deponent further says that said steamer Guido has a cargo capacity of about 5,000 tons, or about 4,400 tons dead weight, her net register being 2,064 tons and her gross register 3,300 tons; that on April 1 and 2 she took on board, at Liverpool, England, about 186 tons of general cargo, rice, beer, hardware, and preserves; and on April 5,

6, and 7, at Santander, Spain, about 300 tons of general cargo, consisting principally of flour, potatoes, and conserves; and at Corrunna about 200 tons of general cargo, principally flour, beans, hams, and vermicelli; and on April 10, at La Puebla, Spain, about 30 tons of general cargo, principally dry sardines, preserves, and beans. The entire cargo was between 700 and 800 tons, and occupied only a small portion of the cargo capacity of the vessel. Such cargo was laden for delivery at Havana, Matanzas, and Cienfuegos,

8 Cuba, it being the intent and purpose thence to proceed to a port of the United States for a return cargo across the Atlantic, and thus complete the voyage. The entire freight upon such cargo was less than \$4,000 in money of the United States, a sum altogether insufficient to cover the expenses of loading, transporting, and delivering the cargo, and offering no inducement for the voyage, the entire inducement for the voyage being the full cargo which the vessel would take in regular course from the United States to Europe, the freight upon which, at current rates, would be nearly, if not fully, \$30,000.

Deponent further says that he is not advised as to at what port of the United States he would have taken his cargo for the return voyage, or whether such cargo would have been taken under charter or on the berth, but that under the uniform practice of the owners of said steamer she would be bound, upon discharge of her cargo in Cuba, to some port of the United States.

Deponent further says that said steamer Guido sailed from La Puebla April 10 for Havana as her first port of call, and proceeded until about four o'clock in the morning of April 27, 1898, at which time, being then distant about seventy miles from Havana and about fourteen miles from Key Piedras, he then being in ignorance of any state of war between the United States of America and the Kingdom of Spain and without any notice thereof, and being without notice of any blockade of the coast of Cuba, and being in entire ignorance of such blockade, was fired upon by the United States ships of war Machias and Terror, and his steamer Guido, entirely without resistance on her part, was captured, with her cargo, by said vessels and sent into this port of Key West, where they have been libeled as prize of war.

9 Deponent further says that he is informed and believes that by the existing policy of the Government of the United States of America, as evidenced by repeated declarations of its executive and by proclamation of the President of the United States, issued and published April 26, 1898, as well as upon principles in harmony with the present views of nations and sanctioned by recent practice, in accordance with which the President of the United States has directed that the war shall be conducted, the said steamer Guido was not at the time and place and under the circumstances of her seizure liable to be treated as enemy's property, but, on the contrary, having sailed from a foreign port prior to April 21, 1898, and being bound for a port of the United States, was exempt from capture. A copy of said proclamation is hereto annexed, marked "A," and deponent prays that reference may be made thereto.

Deponent further says that since giving his deposition *in preparatio* he has been informed and believes that his said steamer was at the time of capture and now is insured against all perils and adventures, including the risks of war, for her full value by underwriters of Lloyds, London, and that if the said vessel should be condemned as prize of war by this court the loss will rest upon and be borne by the said English underwriters, at whose request and by whose authority deponent represents these facts respecting her insurance to the court.

JULIAN DE ORMAECHEA.

Sworn to before me this 23d day of May, 1898.

[SEAL.]

J. OTTO, *Dep. Clerk.*

10

"A."

By the President of the United States of America :

A Proclamation.

Whereas, by an act of Congress approved April 25, 1898, it is declared that war exists, and that war has existed since the 21st, day of April, A. D. 1898, including said day, between the United States of America and the Kingdom of Spain, and

Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris,

Now, therefore I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

First. The neutral flag covers enemy's goods with the exception of contraband of war.

Second. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

Third. Blockades, in order to be binding, must be effective.

Fourth. Spanish merchant vessels in any ports or places within the United States shall be allowed until May 21, 1898, inclusive, for loading their cargoes and departing from such ports or places; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage if, on examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term; Provided, that nothing herein contained shall apply to Spanish vessels, having on board
 11 any officers in the military or naval service of the enemy, or any coal (except such as may be necessary for their voyage), or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

Fifth. Any Spanish merchant vessel which prior to April 21, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart with-

out molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

Sixth. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest ground of suspicion of a violation of law in respect of contraband or blockade.

In witness whereof, etc.

WILLIAM McKINLEY.

Done at the Department of State, etc., this 26th day of April, etc.

(Endorsed:) Claim of Julian Ormaechea, as master, etc., to the steamer "Guido," her engines, etc. Filed May 23d, 1898. E. O. Locke, clerk.

12 (*Motion for Further Proof and Order Denying the Same.*)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER GUIDO & HER CARGO.	

And now comes Julian Ormaechea, master, claimant herein, and upon his test affidavit herewith filed, and all other proceedings in the cause, asks leave to take further or additional proofs respecting the matters set forth in the said test affidavit.

Key West, May 27th, 1898.

(S'd)

JULIAN DE ORMAECHEA.
WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON, *Proctors.*

Upon consideration, the above motion is denied.

Dated Key West, May 27th, 1898.

(S'd)

JAMES W. LOCKE,
U. S. District Judge.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

13 (*Abstract of Minutes of Court.*)

Spring Term U. S. District Court, Friday, May 20th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
<i>vs.</i>	
S. S. GUIDO & CARGO.	

Ordered that further time be granted the defendants in which to perfect their claims.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

SATURDAY, May 21st, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

MONDAY, May 23rd, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

14

TUESDAY, May 24th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is continued.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

WEDNESDAY, May 25th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES	} Prize.
vs.	
S. S. GUIDO & CARGO.	

This cause is argued and submitted and decision is reserved.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

(Decree.)

In the District Court of the United States, Southern District of Florida.

UNITED STATES
against
SPANISH STEAMER GUIDO & CARGO. } Prize.

This cause coming on to be heard upon the allegations of the libel, the claims of the master and the several parties to the cargo of said vessel, and it appearing that the vessel was enemy's property and did not come within the exemption of the proclamation of the President of the United States, and that she is subject to condemnation and forfeiture—

It is ordered that as such enemy's property she be condemned and forfeited to the United States as a legal prize of war, and that the marshal proceed to advertise and sell said vessel and deposit the proceeds thereof according to law.

It further appearing that the claims to the cargo do not fully prove the ownership of said cargo, it is ordered that the claimants herein have sixty days in which to make further proof.

Key West, Florida, May 27th, 1898.

(S'd)

JAMES W. LOCKE, Judge.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Abstract of Minutes.)

FRIDAY, May 27th, 1898.

Present: Hon. James W. Locke, judge.

UNITED STATES
vs.
S. S. GUIDO & CARGO. } Prize.

Notice of appeal by attorneys for the claimants is given in open court.

Attest:

(S'd)

JULIUS OTTO,
Deputy Clerk.

16

(Assignment of Errors.)

District Court of the United States for the Southern District of Florida.

UNITED STATES OF AMERICA, Libellants & Appellees,
against
THE STEAMER GUIDO & HER CARGO; JULIAN ORMAECHEA, Claimant & Appellant. }

And now the above-named claimant and appellant comes and makes assignment of error in respect of the decision and decree of the said district court:

First. In that the said district court held that the steamer Guido was lawful prize of war.

Second. In that the said district court did not hold that the said steamer Guido was not lawful prize of war.

Third. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation as being property owned by neutrals.

Fourth. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation under the fifth article or paragraph of the proclamation issued by the President of the United States of America under date of April 26th, 1898, and referred to in the test affidavit of the claimant.

Fifth. In that the said district court did not hold that the said steamer Guido was privileged and exempt from capture and condemnation under the other provisions of the said proclamation.

Sixth. In that the said district court did not hold and refused to hold that the said steamer Guido had, prior to April 21, 17 1898, sailed from a foreign port bound to a port or place in the United States.

Seventh. In that the said district court did not authorize, allow, and order further and additional proofs respecting the matters set forth in the claimant's test affidavit or in respect of any of the matters therein set forth.

(S'd)

WILHELMUS MYNDERSE AND
G. BOWNE PATTERSON,

Proctors for Claimant.

Endorsed: Filed May 27th, 1898. (S'd) E. O. Locke, clerk.

(Petition of Appeal and Order.)

District Court of the United States for the Southern District of
Florida.

UNITED STATES OF AMERICA, Libellants & Appellees, }
against

THE STEAMER GUIDO & HER CARGO; JULIA- ORMAECHEA, }
Claimant & Appellant.

And now Julia- de Ormaechea, claimant, considering himself aggrieved by the decision and decree of condemnation herein, and alleging error in the said decree, appears in open court and appeals therefrom to the Supreme Court of the United States. He presents herewith an assignment of the errors complained of and a bond for costs, with surety, in the sum directed by the court, and thereupon prays that his said appeal may be allowed, and that the record, including the ship's papers used upon the trial, his test affidavit, and all other proceedings, may be duly certified to the Supreme Court of the United States in accordance with the rules and practice for such cases made and provided, to the end that

the said appeal may be heard and determined by the Supreme Court of the United States.

(S'd)

JULIAN DE ORMAECHEA.

WILHELMUS MYNDERSE AND

G. BOWNE PATTERSON,

Proctors for Claimant.

Upon reading and filing the foregoing notice and prayer of appeal and the assignment of errors and bond upon appeal, the appeal of the claimant, Julia de Ormaechea, is hereby allowed.

Key West, May 28th, 1898.

(S'd)

JAMES W. LOCKE,

*District Judge of the United States for the
Southern District of Florida.*

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

(Bond.)

United States District Court, Southern District of Florida.

THE UNITED STATES OF AMERICA	}
<i>against</i>	
THE STEAMER GUIDO & HER CARGO.	

Know all men by these presents that we, Julian de Ormaechea, principal, and the American Surety Company, surety, are held and firmly bound unto the United States of America in the sum of five hundred dollars, to be paid to the said United States of America; for which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated the 28th day of May, 1898.

Whereas lately, at a session of this court, in a cause of prize pending therein, wherein The United States is libellant against The Steamship Guido and her cargo, and the said Julian de Ormaechea is claimant of the steamship, a final decree was rendered in favor of said libellant, and the said claimant having filing his appeal papers and having obtained an order granting his appeal to the Supreme Court of the United States:

Now, the condition of the above obligation is such that if the said Julian de Ormaechea shall prosecute his said appeal to effect and answer all damages and costs if he fail to make his appeal good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'd)

(S'd)

J. DE ORMAECHEA.

THE AMERICAN SURETY COMPANY OF NEW YORK,

By GEO. W. ALLEN, *At'y-in-fact.*

Taken and acknowledged before me May 28th, 1898.

(S'd)

JULIUS OTTO,

U. S. Comm'rs.

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

20

(Citation and Proof of Service.)

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the United States of America, J. W. Stripling, district attorney, Greeting:

You are hereby cited and admonished to be and appear before the next United States Supreme Court within the time limited by law, pursuant to an appeal filed in the clerk's office of the United States district court for the southern district of Florida, wherein Julian de Ormaechea, claimant of the steamer Guido, is appellant, and The United States of America are appellees, to show cause, if any there be, why the decree rendered against the said steamer Guido and said appellant, as in the appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of May, in the year of our Lord one thousand eight hundred and ninety-eight.

(S'd)

JAMES W. LOCKE,

District Judge, Southern District of Florida.

Service of a true copy of the above citation is hereby acknowledged.

May 28th, 1898.

(S'd)

J. N. STRIPLING, *U. S. Att'y.*

Endorsed: Filed May 28th, 1898. (S'd) E. O. Locke, clerk.

21

(Order on Claim for Cargo.)

In the District Court of the United States, Southern District of Florida.

UNITED STATES

vs.

STEAMER GUIDO & CARGO.

} Prize.

In the matter of the claim of Kaltenbach & Schmidt, of Liverpool, for 2 barrels and 68 cases of medicines and drugs and mineral waters; of Gotscher & Co., of Birmingham, for 153 cases of hardware and 290 pieces of hardware; of G. H. Fletcher & Co., of Liverpool, for 500 bags of rice; of Kleinwort, Sons & Co., of London, for 100 cases of fish; of George Younger & Sons, of Alloa, Scotland, for 20 cases of beer; of Eckenstein & Mead for 300 bags of rice; of Herman

Schurhoff & Co., of Birmingham, for 4 cases of gutters and 171 bundles of iron, being part of the cargo of the said steamer Guido, having come on to be heard upon the claims and test affidavits of the claimants, and it appearing that the same was not sufficient to prove conclusively the property to be in the claimants, and it having been ordered that the said claimants have leave to make further proof, but it further appearing that said property *being* liable to deteriorate and become injured by the delay pending such further investigation, or that the costs of keeping the same will be disproportionate to its value, it is ordered that the marshal proceed to advertise and sell said property and deposit the proceeds as provided by law, to abide the further judgment and decree of the court upon said claim.

Jacksonville, Fla., June 6th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

- 22 District Court of the United States for the Southern District of Fla.

UNITED STATES OF AMERICA	}	In Prize.
<i>against</i>		
THE STEAMER "GUIDO" AND HER CARGO.		

Please take notice, upon the proceedings had in this action and upon the annexed affidavit of Wilhelmus Mynderse, we shall make application before the Honorable James W. Locke, district judge, in the United States court-rooms, in the city of Jacksonville, Florida, on Tuesday, June 21, 1898, at three o'clock in the afternoon of that day, that the said steamer "Guido" be ordered to New York for sale, and for such other, further, and different relief as in law and justice should be administered.

New York, June 17th, 1898.

WILHELMUS MYNDERSE,

Proctor for Claimants.

To Hon. Joseph N. Stripling, United States district attorney;
Edward K. Jones, Esq., special counsel for libellant.

STATE OF NEW YORK, }
Southern District of New York, } ss:

Wilhelmus Mynderse, being duly sworn, deposes and says that he is one of the proctors for the claimants of the steamer "Guido" in the above-entitled matter.

Deponent further says that the cargo of the Guido has been discharged, and that her officers and crew have left her or are on the point of leaving her for the purpose of returning to Spain, and that the steamer will seriously depreciate and deteriorate if left without a crew to keep her machinery department and other departments in order.

Deponent further says that the steamer "Guido" is a large and

valuable steamer, and that the most advantageous market for her will be the market of New York.

WILHELMUS MYNDERSE.

Sworn to before me this 17 day of June, 1898.

[SEAL.]

FREDERICK GREEN,
Notary Public, N. Y. Co.

Endorsed: Affidavit and notice. Filed 21st day of June, 1898.
E. O. Locke, clerk.

Due service of a copy of the within notice and affidavit is hereby admitted this 17th day of June, 1898.

EDWARD K. JONES,
Special Counsel U. S. Gov't in Prize Cases.

24 District Court of the United States, Southern District of Florida.

UNITED STATES OF AMERICA	} In Prize.
<i>against</i>	
THE STEAMER "GUIDO" AND HER CARGO.	

The claimant of the steamer Guido having made application, upon the proceedings had herein and upon the affidavit of Wilhelmus Mynderse, verified June 17th, 1898, that the said steamer be ordered to New York for sale, now, after hearing Frederick Green in support of said application and Hon. Joseph N. Stripling, United States attorney, appearing for the United States of America, it is hereby, upon motion of Wilhelmus Mynderse, proctor for said claimant—

Ordered that the said steamer "Guido" be taken by the marshal to the port of New York for sale there.
Jacksonville, Fla., June 22, 1898.

JAMES W. LOCKE, Judge.

Endorsed: Order that steamer be taken to New York for sale. Filed 22nd June, 1898. E. O. Locke, clerk.

25 Endorsed: Filed June 6th, 1898. (S'd) E. O. Locke.

(Order Extending Time to File Record.)

In the United States District Court, Southern District of Florida.

UNITED STATES OF AMERICA	}
<i>vs.</i>	
THE STEAMER GUIDO & HER CARGO.	

An appeal having been allowed by the court herein from the final decree in the above-entitled cause condemning the above-named steamer and her cargo—

Now, upon the underwritten consent of the United States attorney for the southern district of Florida and the motion of Wil-

helmus Mynderse, proctor for the claimants of said steamer and her cargo, it is hereby ordered that the time of the claimants and each of them to file the record on appeal be, and hereby is, extended to thirty days from June 25th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

I hereby consent to the entry of the foregoing order.

(S'd)

J. N. STRIPLING,

U. S. Attorney.

Endorsed: Filed June 24th, 1898. (S'd) E. O. Locke, clerk.

26 Standing interrogatories established by the district court of the United States for the southern district of Florida, to be administered in prize causes in said court, to all persons who may be produced as witnesses to be examined *in preparatorio*.

1st interrogate. What is your name, where were you born, and where have you lived for the last seven years? Where do you now live, and how long have you lived in that place? To what prince or State, or to whom are you, or have you ever been a subject? Are you a married man, and if married, where do your wife and family reside?

2d interrogate. Were you present at the time of taking and seizing the ship, or her lading, or any of the goods or merchandises concerning which you are now examined? Had the ship concerning which you are now examined any commission; what, and from whom?

3d interrogate. In what place, latitude or part, and when, was the said ship and goods concerning which you are now examined, taken and seized? Upon what pretence, and for what reasons were they seized? Into what port were they carried, and under what colors did the said ship sail? What other colors had you on board, and for what reason had you such other colors? Was any resistance made, at the time when the said ship was taken? and if yea, how many guns were fired? and by whom? and by what ship or ships were you taken? Was the ship or vessel by which you were captured, a ship of war, or a vessel acting without any commission, as you believe? Were any other and what ship in sight, at the time of the capture?

4th interrogate. What is the name of the master or commander of the ship or vessel taken? How long have you known the said master, and who appointed him to the command of said vessel? Where did said commander take possession of her, at what time, and what was the name of the person who delivered the possession to the said master? Where doth he live? Where is the said master's fixed place of abode, and where doth he generally reside? How long has he lived there, where was he born, and of whom is he now a subject? Is he married? If yea, where does his wife and family reside?

5th interrogate. Of what burden is the vessel which has been taken? What was the number of her mariners, and of what coun-

try were the said seamen and mariners? Did they all come on board at the same port, or at different ports, and who shipped or hired them, and when and where?

6th interrogate. Had you, or any of the officers or mariners belonging to the ship or vessel, concerning which you are now examined, any, and what, part, share or interest in the said vessel or her lading? If yea, set forth who and what goods or interest you or they have? Did you belong to the said vessel, at the time she was seized and taken? In what capacity did you belong to her? How long have you known her? When and where did you first see her, and where was she built?

7th interrogate. What is the name of the vessel? How long has she been so called? Do you know of any other name or names, and what are they, by which she has heretofore been called? Had she any passport or sea chart on board, and from whom? To what ports and places did she sail, during her said voyage, before she was taken? Where did her last voyage begin, and where was the said voyage to have ended? From what port, and at what time, particularly from the last clearing port, did the said ship sail, previously to the capture? Set forth all the ports to which she has sailed, and at which she has touched and traded, during her whole voyage, out and home.

8th interrogate. What lading did the said vessel carry, at the time of her first setting sail on her last voyage, and what sort of lading and goods had she on board, at the time she was taken? When was the same put on board? Set forth the different species of lading, and the quantity of each sort. Has any part of the cargo of said vessel been unladen, since the commencement of her original voyage? If so, at what ports or places was it unladen? State the articles which were unladen.

9th interrogate. Who were the owners of the vessel, at the time when she was seized? How do you know that they were owners at that time? Of what nation or country are such owners by birth? Where do they reside, and where do their wives and families reside? How long have they resided there? Where did they reside before, to the best of your knowledge? To whom are they subject? How long have the present owners been in possession? and of whom did they purchase?

10th interrogate. Was any bill of sale made, and by whom, to the aforesaid owners of said vessel? and if any such were made in what month and year, and where, and in the presence of what witnesses? Was any, and what, engagement entered into concerning the purchase, further than appears on the bill of sale? If yea, was it verbal or in writing? Where did you last see it, and what has become of it?

11th interrogate. Was the said lading put on board at one port and at one time or at several ports and at several times, and at what ports, by name? Set forth what quantities of each sort of goods were shipped at each port.

12th interrogate. What are the names of the respective laders or owners, or consignees of said goods? What countrymen are they?

Where do they now live and carry on their business? How long have they resided there? Where did they reside before, to the best of your knowledge? And where were the said goods to be delivered, and for whose real account, risk or benefit? Have any one of the said consignees or shippers, any and what interest in the said goods? If yea, whereon do you found your belief, that they have such interest? Do you verily believe, that at the *at the* time of the lading the cargo and at the present time, and also if said goods shall be restored and unladen at the destined port, the goods did, do, and will belong to the same persons and to none others?

27 13th interrogate. How many bills of lading were signed for the goods seized on board the said ship? Were any of those bills of lading false or colorable, or were any bills of lading signed, which were different in any respect from those which were on board the ship, at the time she was taken? What were the contents of such other bills of lading, and what became of them?

14th interrogate. Are there in the United States of America any bills of lading, invoices, letters or instruments relative to the ship and goods, concerning which you are now examined? If yea, set forth where they are, and in whose possession, and what is the purport thereof, and when they were brought or sent to the United States.

15th interrogate. Was there any charter-party signed for the voyage, in which the ship, concerning which you are now examined, was seized and taken? What became thereof? When, where, and between whom, was such charter-party made? What were the contents of it?

16th interrogate. What papers, bills of lading, letters or other writings, were on board the ship, at the time she took her departure from the last clearing port, before her being taken as prize? Were any of them burnt, toru, thrown overboard, destroyed or cancelled, or attempted to be concealed, and when, and by whom, and who was then present?

17 interrogate. Has the ship, concerning which you are now examined, been, at any time, and when, seized as a prize, and condemned as such? If yea, set forth into what port she was carried, and by whom, and by what authority, or on what account she was condemned.

18th interrogate. Have you sustained any loss by the seizing and taking the ship, concerning which you are now examined? If yea, in what manner do you compute such your loss? Have you already received any indemnity, satisfaction or promise of satisfaction, for any part of the damage which you have sustained, or may sustain, by this capture and detention, and when, and from whom?

19th interrogate. Is the said ship, or goods, or any, and what part, insured? If yea, for what voyage is such insurance made, and at what premium, and when, and by what persons, and in what country was such insurance made?

20th interrogate. In case you had arrived at your destined port, would your cargo, or any part thereof, on being unladen, have immediately become the property of the consignees, or any other per-

son, and whom? Or was the lader to take the chance of the market for the sale of his goods?

21st interrogate. Let each witness be interrogated of the growth, produce, and manufacture of what country and place was the lading of the ship or vessel, concerning which you are now examined, or any part thereof.

22d interrogate. Whether all the said cargo, or any, and what part thereof, was taken from the shore or quay, or removed or transhipped from one boat, barque, vessel or ship, to another? From what, and to what shore, quay, boat, barque, vessel or ship, and when and where, was the same so done?

23d interrogate. Are there, in any other country, and where, or on board any and what ship or ships, vessel or vessels, other than the ship and vessel concerning which you are now examined, any bills of lading, invoices, letters, instruments, papers or documents, relative to the said ship, or vessel and cargo, and of what nature are such bills of lading, invoices, letters, instruments, papers or documents, and what are the contents? In whose possession are they, and do they differ from any of the papers on board, and in what particular do they differ?

24th interrogate. Were any papers delivered out of the said ship or vessel, and carried away in any manner whatsoever? And when, and by whom, and to whom, and in whose custody, possession or power, do you believe the same now are?

25th interrogate. Was bulk broken during the voyage in which you were taken, or since the capture, of the said ship? And when, and where, by whom, and by whose orders, and for what purpose, and in what manner?

26th interrogate. Were any passengers on board the aforesaid ship? Were any of them secreted, at the time of the capture? Who were the passengers, by name? Of what nation, rank, profession or occupation? Had they any commission? for what purpose, and from whom? From what place were they taken on board, and when? To what place were they finally destined, and upon what business? Had any, and which of the passengers, any, and what property or concern, or authority, directly or indirectly, regarding the ship and cargo? Were there any officers, soldiers or mariners secreted on board and for what reason were they secreted? Were any of the citizens of the United States on board, or secreted or confined, at the time of the capture? How long, and why?

27th interrogate. Were, and are, all the passports, sea briefs, charter-parties, bills of sale, invoices and papers, which were found on board, entirely true and fair? Or are any of them false or colorable? Do you know of any matter or circumstances to affect their credit? By whom were the passports or sea briefs obtained, and from whom? Were they obtained for this ship only? And upon the oath, or affirmation, of the persons therein described, or were they delivered to, or on behalf of the person or person- who appear to have been sworn, or to have affirmed thereto, without their ever having, in fact, make any such oath or affirmation? How long — time were they to last? Was any duty or fee payable, and paid,

for the same? And is there any duty or fee to be paid on the renewal thereof? Have such passports been renewed, and how often? And has the duty or fee been paid for such renewal? Was the ship in a port in the country where the passports and sea briefs were granted? and if not, where was the ship at the time? Had any person on board any let-pass, or letters of safe conduct? If yea, from whom and for what business? Had the said ship any
 28 license or passport from any foreign power or authority during the voyage? If so, state from whom — been obtained, and for what purpose and use.

28th interrogate. Have you written or signed any letters or papers concerning the ship and her cargo, other than those found on board and delivered to her captors? If yea, what was their purport, to whom were they written and sent, and what is become of them?

29th interrogate. Towards what port or place was the ship steering her course, at the time of her being first pursued and taken? Was her course altered, upon the appearance of the vessel by which she was taken? Was her course, at all times, when the weather would permit, directed to the place or port for which she appears to have been destined by the ship's papers? Was the ship, before, or at the time of her capture, sailing beyond or wide of the said place or port to which she was so destined by the said ship's papers? At what distance was she therefrom? Was her course altered, at any, and what time, and to what other port or place, and for what reason?

30th interrogate. By whom, and to whom, hath the said ship been sold or transferred, and how often? At what time, and at what place, and for what sum or consideration, hath such sum or consideration been paid or satisfied? Was the sum paid, or to be paid, a fair and true equivalent? Or what security or securities have been given for the payment of the same, and by whom, and where do they live now? Do you know, or believe, in your conscience, such sale or transfer has been truly made and not for the purposes of covering or concealing the real property? Do you verily believe, that if the ship should be restored, she will belong to the persons now asserted to be the owners and to none others?

31st interrogate. What guns were mounted on board the ship, and what arms and ammunition were belonging to her? Why was she so armed? Were there on board any other, and what, arms and ammunition, and when and where — they put on board? and by whom, or by what authority, or for what purpose or destination, and on whose account were they put on board?

32d interrogate. What is the whole — which you know or believe, according to the best of your knowledge and belief, regarding the real and true property and destination of the ship and cargo, concerning which you are now examined at the time of the capture?

29 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

THE UNITED STATES OF AMERICA }
 vs. } Prize.
 SPANISH STEAMSHIP "GUIDO."

Deposition of Julian Ormaechea, a witness produced, sworn, and examined in *preparatorio* on the 14th day of May, A. D. 1898, at the court-house, Key West, in said district, on the standing interrogatories established by this honorable court, the said witness having been produced for the purpose of such examination in behalf of the captors of a certain ship or vessel called the "Guido."

1. To the 1st interrogatory deponent answers:

My name is Julian Ormaechea. I was born in Mondaco, which is my permanent place of abode and has been all my life. For the last seven years I have been navigating. I am a subject of Spain. My wife and family live in Mondaco, Spain.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking and seizing of the Guido. The ship has a royal patent issued by the Spanish government.

3. To the 3rd interrogatory deponent answers:

30 The ship was 14 miles N. W. off Cardenas on the 27th day of April, at about 4 a. m., 1898, when she was captured. The ship was seized on account of the war which existed between Spain and the United States. The ship sailed under the colors of Spain and was after her capture carried into the port of Key West. We made no resistance at the time of the capture. I was captured by the U. S. S. Machias. I did not see any other vessel present at the time my ship was captured, but when day came I saw another war ship.

4. To the 4th interrogatory deponent answers:

I am the master of the Guido. I was appointed to the command of the ship by the agents at Liverpool, Messrs. G. H. Fletcher & Co. I took possession at Liverpool about four months ago.

5. To the 5th interrogatory deponent answers:

The tonnage of the vessel is 2,054 tons. She had on board 37 mariners, who are all Spanish subjects. All of the crew are registered in the Spanish naval reserve at different ports in Spain. They came on board at different times and at different ports.

6. To the 6th interrogatory deponent answers:

None of the officers or crew of the ship had any interest of any description in the ship or cargo. I have commanded the ship only four months. I saw her many times in Liverpool. She was built in Belfast, Ireland.

7. To the 7th interrogatory deponent answers:

31 The vessel's name is Guido. She has been called by that name since she was built.

Her last voyage began at Liverpool, England, and was to have ended at Liverpool. I cleared from La Puebla, Spain, which is the

last clearing port before my ship was captured. On our last voyage we started from Liverpool and touched at Santander, Corrunia, and La Puebla, and were making for Havana when we were captured.

8. To the 8th interrogatory deponent answers:

The said ship had on board a general cargo when she was captured. The said cargo was put on board the first days of April, 1898, which was taken on board at the several ports last named. We had from Liverpool—we had rice, hardware, and can goods, beer, and mineral waters. At Santander we took on potatoes, flour, can goods, etc. At La Corrunia we took on flour, string beans, wine, chocolate, etc. At La Puebla we took on sardines and can goods. No part of the cargo of said vessel had been unladen until after the capture of the ship.

9. To the 9th interrogatory deponent answers:

The owners of the vessel at the time of the seizure were the La Fletcher Company. I do not know their nationality by birth. The general manager of the company resides in Barcelona, Spain. The company resides at Bilboa, Spain. They have been living in Bilboa for over 19 years, during which time I have been working
32 for them. I do not know who they are subjects of. It is a Spanish company. They have been in possession of the vessel for about 14 years. They had the ship built for their company.

10. To the 10th interrogatory deponent answers:

The ship has never been sold since she was built.

11. To the 11th interrogatory deponent answers:

I have already stated all I know as to the loading of cargo and the quantity of each kind.

12. To the 12th interrogatory deponent answers:

I do not know the respective names of the owners or consignees of said goods. They are Spaniards and Englishmen. Some of the laders live in England and some in Spain; the consignees live in Cuba. I do not know anything in relation to the ownership of the property. I do not know the names of the parties. The manifest will show all this.

13. To the 13th interrogatory deponent answers:

The goods shipped from Liverpool, the agent always attended to the bills of lading. I have a copy of said bills of lading from the agent. I think the agent keeps one copy. At Santander the agent always attended to the bills of lading. He gave me a copy of all bills of lading for the goods shipped from that port. He, I believe,
33 kept a copy. In the other Spanish ports, I gave one bill of lading for each articles shipped, and I kept a copy. I delivered these copies of bills of lading to the prize master.

14. To the 14th interrogatory deponent answers:

I do not believe there are in the United States any bills of lading, invoices, letters, or instruments relative to the ship and cargo, except those delivered to the prize master by me at the time of my capture.

15. To the 15th interrogatory deponent answers:

There was no charter-party for the voyage.

16. To the 16th interrogatory deponent answers :

I delivered all the papers that were on board my vessel to the prize master. None of them were destroyed, concealed, thrown overboard, burnt or concealed.

17. To the 17th interrogatory deponent answers :

The ship has never before been seized and condemned as a prize previous to this.

18. To the 18th interrogatory deponent answers :

I loose my wages by this seizure. I have not received any indemnity, satisfaction, or promise of satisfaction for any part of the damage which I have sustained or may sustain by this capture and detention.

19. To the 19th interrogatory deponent answers :

I do not know whether or not the ship or any part of the cargo is insured.

20. To the 20th interrogatory deponent answers :

In case we had arrived at our port of destination, the cargo, upon being unladen, would have become the property of those persons expressed in the manifest.

21. To the 21st interrogatory deponent answers :

Part of this cargo was taken on board at Liverpool and part was taken on in Spain. I believe the same were produced in England and Spain.

22. To the 22nd interrogatory deponent answers :

The cargo from Liverpool and Santander was taken on from the wharf. The cargo from La Corrunia and La Puebla was taken from the dock in lighters.

23. To the 23rd interrogatory deponent answers :

This interrogatory has been fully answered in my answer to the 14th interrogatory. There are no bills of lading and invoices except those found on my ship.

24. To the 24th interrogatory deponent answers :

The only papers delivered out of the ship were those delivered to the prize master at the time the ship was captured.

25. To the 25th interrogatory deponent answers :

The bulk of the cargo was not broken until after the capture, when it was broken by the U. S. marshal.

26. To the 26th interrogatory deponent answers :

There were two passengers on board. They were not concealed at the time of the capture. I do not know their names. I do not know their rank or profession, but they are Spanish steerage passengers. They were taken on board at Santander, and were going to Havana. I do not know the business they were going on. There were no officers, soldiers, or marines on board. There were no citizens of the United States on board or secreted.

27th. To the 27th interrogatory deponent answers :

All papers found on board the ship were true and correct. The ship had a royal patent from the Spanish government. If the vessel should be restored she would belong to the persons said to be the owners.

28. To the 28th interrogatory deponent answers:

I have sent a letter to Liverpool informing the agents that I had been captured. I wrote home to my family. I gave the letters to the marshal to mail; written or signed no letters or documents.

29. To the 29th interrogatory deponent answers:

36 The ship was steering her course for Havana when she was captured. Her course was not altered upon the appearance of the vessel which captured us. The course was at all times directed toward the place or port which she was destined by her papers. The ship was not at the time of the capture or previous sailing wide of her port of destination. The ship was about seventy miles from Havana. After the capture her course was altered by the prize master, and she was brought into the port of Key West.

30. To the 30th interrogatory deponent answers:

The ship has never been sold or transferred. If the ship were to be restored, she would belong to the persons now said to be the owners.

31. To the 31st interrogatory deponent answers:

We had no guns or cannon of any description on board. We had no arms and ammunition on board.

32.— the 32nd interrogatory deponent answers:

I have stated all that I know or believe concerning the true property and destination of the ship and her cargo.

JULIAN DE ORMACEHEA.

Sworn to and subscribed before me this May 14th, 1898.

J. M. PHIPPS,

Prize Commissioner.

37 In the District Court of the United States in and for the Southern District of Florida. In Admiralty.

UNITED STATES OF AMERICA	} Prize.
vs.	
SPANISH STEAMSHIP "GUIDO."	

Deposition of Jesus Echevarria, a witness produced, sworn, and examined at the United States court-house at Key West, in said district, on the 14th day of May, A. D. 1898, on the standing interrogatories established by the district court of the United States in and for the southern district of Florida, the said witness being produced for the purpose of such examination in behalf of the captors of a certain vessel called the "Guido."

1. To the 1st interrogatory deponent answers:

My name is Jesus Echevarria; I was born at Mondacco, Spain, which is my present place of residence, where I have resided during the whole of my life. I am a subject of Spain. I am married and my wife and family reside in Mondacco.

2. To the 2nd interrogatory deponent answers:

I was present at the time of the taking and seizing of the ship. She had a royal patent issued by the Spanish government.

38 3. To the 3rd interrogatory deponent answers:

The ship was captured about seventeen miles from Cayo Piedra light-house, Cuba, on the 27th day of April, at about 4.15 a. m., 1898. I don't know why she was seized. The ship sailed under the Spanish flag, and she was carried into the port of Key West after the capture. We had no other colors on board. The ship made no resistance at the time of her capture. The ship was captured by the Terror and Machias, U. S. men-of-war. No other ships were in sight.

4. To the 4th interrogatory deponent answers:

The name of the master who commanded this ship was Julian Ormachea. I have known the captain for since I was a boy; many years. I do not know who appointed him to the command of the vessel. I do not know when or *who* the captain took possession of said vessel or who delivered the possession to him. The captain lives in Mondacco, Spain, which is his fixed place of abode. The captain is a subject of Spain. He is a married man and his family lives in Mondacco, Spain.

5. To the 5th interrogatory deponent answers:

The vessel is of 2,064 registered tons. Her mariners number 37 men, including the captain. They are all registered at several ports in Spain and belong to the Spanish naval reserve. I do not
39 belong to the naval reserve, as I paid for a substitute. They came on board at different ports.

6. To the 6th interrogatory deponent answers:

None of the officers or men had any share or interest in the ship or cargo. I belonged to the vessel at the time she was seized in the capacity of first officer. I have known the ship for eight years. I first saw her in Santander, Spain, and she was built in Belfast, Ireland.

7. To the 7th interrogatory deponent answers:

The vessel is named Guido, and she has been named by that name since she was built. All the business was transacted at Santander, Spain, and that was our starting point of our trips. The men made contracts from said place, and we always received our wages from that point. We used to sail from Liverpool, but that has been changed. We last cleared from La Puebla, Spain, before we were captured.

8. To the 8th interrogatory deponent answers:

The vessel had a general cargo when she started out on her last voyage, when she was captured. The said cargo was put on board about the first part of April, 1898. I cannot state the different species of lading and the quantity of each sort. A portion of the cargo was unladen at Key West after we were captured.

9. To the 9th interrogatory deponent answers:

40 I do not know who the owners were at the time she was seized. I do not know where they live.

10. To the 10th interrogatory deponent answers:

I do not know anything about any bills of sale.

11. To the 11th interrogatory deponent answers:

The said cargo was put on board at different ports at different

time. I do not know the quantities that were put on board at the different places.

12. To the 12th interrogatory deponent answers :

I do not know the names of the respective laders, owners, or consignees of the goods.

13. To the 13th interrogatory deponent answers :

I do not know anything about any bills of lading.

14. To the 14th interrogatory deponent answers :

I do not know anything about any bills of lading or invoices being in the United States.

15. To the 15th interrogatory deponent answers :

I do not know whether or not there was a charter-party for the voyage.

16. To the 16th interrogatory deponent answers :

I do not know what papers, bills of lading, letters, or other writings were on board at the time the ship took her departure

41 from the last clearing port. I did not see any of the papers burnt, destroyed, thrown overboard, or concealed. I do not know anything about it.

17. To the 17th interrogatory deponent answers :

The ship, to the best of my knowledge, has never before been seized or condemned as a prize.

18. To the 18th interrogatory deponent answers :

I have lost my wages by the capture of this ship. I have not received any satisfaction or promise of satisfaction for any loss which I may sustain or which I have sustained by reason of the capture.

19. To the 19th interrogatory deponent answers :

I do not know whether or not the said ship and cargo were insured.

20. To the 20th interrogatory deponent answers :

I do not know anything about the property belonging to the consignee or shipper.

21. To the 21st interrogatory deponent answers :

I do not know where the cargo was produced, grown, or manufactured.

22. To the 22nd interrogatory deponent answers :

The cargo was taken from the wharf and the lighters.

42 23. To the 23rd interrogatory deponent answers :

I do not know anything about any bills of lading, invoices, or other papers concerning the ship and cargo being in any other country or on board any other ship.

24. To the 24th interrogatory deponent answers :

There were no papers delivered out of or taken from the ship except those which were delivered to the prize master.

25. To the 25th interrogatory deponent answers :

The bulk of the cargo was not broken during the voyage, but after our capture and when we were brought into port of Key West the same was broken by the United States marshal.

26. To the 26th interrogatory deponent answers :

There were two passengers. I do not know their names. They

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

(Order Regarding Original Documents.)

U. S. District Court, Southern District of Florida.

THE UNITED STATES }
vs. } Prize.
 S. S. GUIDO & CARGO. }

Ordered that the clerk of this court transmit to the Supreme Court of the United States the original documents produced in this case by the prize master and prize commissioners and submitted in evidence in the hearing herein for inspection, if desired, in
 45 said Supreme Court upon the hearing of the appeal herein; that the same be securely sealed and a schedule thereof made and attached thereto, and a copy of said schedule be retained by the clerk.

Said papers, after inspection and disposition of this case by the said appellate court, to be returned to the files of this court.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

Endorsed: Filed July 19th, 1898. (S'd) E. O. Locke, clerk.

46 *(Order Extending Time to File Record.)*

District Court of the United States for the Southern District of Florida.

THE UNITED STATES OF AMERICA, Libellants, }
against } For Prize.
 THE STEAMER GUIDO AND HER CARGO. }

It appearing to me, the judge who signed the citation herein, that good cause exists why the record on appeal herein to the Supreme Court of the United States has not and cannot be filed and the said case docketed in the Supreme Court within the time limited by the rules of the Supreme Court and the order heretofore made herein, I do now order that the time within which said record shall be filed and the said case docketed in the Supreme Court be, and the same is hereby, enlarged to and including the first day of September, 1898.

July 19th, 1898.

(S'd)

JAMES W. LOCKE, *Judge.*

We consent to the foregoing order.

(S'd)

WILHELMUS MYNDERSE.

(S'd)

J. N. STRIPLING, *U. S. Att'y.*

47

THE UNITED STATES

vs.

THE SPANISH STEAMSHIPS "BUENA VENTURA," "PANAMA,"
 "Catalina," "Miguel Jover," "Pedro," and "Guido," } Prize.
 and Cargoes.

The questions involved in these several cases, being of the same character, have been considered together.

Of these vessels, the "Buena Ventura" cleared from the port of Scranton, Miss., on the 16th of April, 1898, and sailed with a cargo of lumber for Rotterdam the 19th of that month, and was captured in the straits of Florida between Key West and Cuba on the 22nd, by the U. S. S. S. "Nashville;" the "Panama" cleared and sailed from New York for Havana with an assorted cargo on the 20th of the same month, and was captured on the 25th by the U. S. S. S. "Mangrove" while approaching that port; the "Catalina" and the "Miguel Jover," laden with cotton and staves, cleared from New Orleans on the 21st of the same month and sailed the evening of the same day for Barcelona and Genoa; the "Catalina" was captured by the U. S. S. S. "Detroit" and the "Miguel Jover" by the U. S. S. S. "Helena," both on the 24th; the "Pedro," which had sailed from Antwerp some time before, had been into Havana, had cleared for Santiago, Cuba, and was captured on the 22nd of the same month, about twelve miles from the port of Havana, by the U. S. S. S. "New York," and the "Guido" from Liverpool, bound for Havana by the way of Santander, Cuwana, and La Puebla, was captured on the 27th by the U. S. S. S. "Terror."

They are all Spanish vessels, sailing under the Spanish flag with royal patents, officered and manned by Spaniards, and, with the exception of the Pedro and the Guido, no question has been raised as to their being enemy's property.

They were all merchant vessels engaged in regular lines of commerce, and this and the hardship and injustice of the captures before a declaration of war has been strenuously urged in argument as contrary to the humane policy of our Government, in addition to the provisions of the President's proclamation.

The principles of law of prize have been so often and so distinctly declared by the highest courts of all civilized countries that they need no extended review here. The law of prize is a law of war, of might, and of force, which is to be exercised at the order and behest of the Executive and not upon the principles of policy or equity, and while prize courts, where questions of doubt arise, yield as far as possible to the claims of humanity and respect for personal rights, yet they cannot be controlled by such considerations.

The former rule of the law of prize was that the bel-igerent had a right to capture the property of the opposing bel-igerent or antagonist, under any circumstances, and to injure him in any way by depriving him of his property.

That was the original practice, but it has been restricted by the gradual advance of civilization until by the prize law of today, as accepted, the captor has the right, in the absence of any declaration

or exemption by the political power, to capture, wherever and whenever found afloat, anything which belongs to or is the property of the enemy.

Whenever it is claimed that there is an exemption made by proclamation or by ordinance, the burden of proof is upon the claimant to show that the particular case comes within the exemption, and although such proclamation or ordinance is to be liberally construed in behalf of the claimants, there must be found therein sufficient language to justify the court in finding that the intention was to exempt from seizure the class of property under investigation. The language to justify an exemption must be found; it cannot be presumed from international history or policy, nor from the principles of justice, generosity, or humanity. The important questions in the cases now pending arise upon the construction of the proclamation of the President of the United States of April 26th, 1898.

As it is construed by the claimants of these several steamships each one of them comes within some provision of this proclamation, which exempts it from the liability of capture and condemnation, but as construed by the attorneys for the captors, not one of them is exempt.

The proclamation is as follows :

"By the President of the United States of America :

"A Proclamation.

"Whereas, by an act of Congress approved April 25th, 1898, it is declared that war exists, and that war has existed since the 21st of April, 1898, including said day, between the United States of America and the Kingdom of Spain ; and

"Whereas, it being desirable that such war should be conducted upon principles in harmony with the present views of nations sanctioned by their recent practice, it has already been announced that the policy of this Government will be not to resort to privateering, but to adhere to the rules of the declaration of Paris ;

"Now, therefore, I, William McKinley, President of the United States of America, by virtue of the power vested in me by the Constitution and the laws, do hereby declare and proclaim :

50 "1. The neutral flag covers enemy's goods with the exception of contraband of war.

"2. Neutral goods not contraband of war are not liable to confiscation under the enemy's flag.

"3. Blockades, in order to be binding, must be effective.

"4. Spanish merchant vessels in any ports or places within the United States, shall be allowed until May 21st, 1898, inclusive for loading their cargoes and departing from such ports or places ; and such Spanish merchant vessels, if met at sea by any United States ship, shall be permitted to continue their voyage, if, upon examination of their papers, it shall appear that their cargoes were taken on board before the expiration of the above term : Provided, that nothing herein continued shall apply to Spanish vessels hav-

ing on board any officer in the military or naval service of the enemy: or any coal (except such as may be necessary for their voyage) or any other article prohibited or contraband of war, or any dispatch of or to the Spanish government.

"5. Any Spanish merchant vessel which, prior to April 21st, 1898, shall have sailed from any foreign port bound for any port or place in the United States, shall be permitted to enter such port or place, and to discharge her cargo and afterward forthwith to depart without molestation; and any such vessel, if met at sea by any United States ship, shall be permitted to continue her voyage to any port not blockaded.

"6. The right of search is to be exercised with strict regard for the rights of neutrals, and the voyages of mail steamers are not to be interfered with, except on the clearest ground of suspicion of a violation of law in respect of contraband or blockade.

51 "In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

"Done at the city of Washington on the 26th day of April, in the year of our Lord one thousand eight hundred and ninety-eight, and of the Independence of the United States the one hundred and twenty-second.

"WM. McKINLEY.

"By the President:

"ALVEY A. ADEE,

"*Acting Secretary of State.*"

Examining this proclamation in its several parts, we find, first, the simple declaration and announcement of a recognition of a condition of war since the 21st of April, 1898, as declared by the act of Congress of April 25th, 1898; second, a declaration of the desire that such war shall be conducted upon principles in harmony with the present views of nations and sanctioned by recent practice.

This being the declared intention of the Executive, it must be accepted to aid in construing the subsequent declarations of the proclamation.

The first point in which the Executive desires to continue the practice and be in harmony with the views of nations is that there shall be no privateering; the second, that a neutral flag shall cover the enemy's goods, with the exception of contraband of war, and that neutral goods not contraband of war shall not be liable to forfeiture under the enemy's flag. So far it is very clear that the proclamation has followed the humane practice of all nations more recently established; but reaching the fourth article of the proclamation, we find it absolutely necessary in these cases, in order to interpret and construe it according to the arguments of either

52 the libellants or the defendants, to read into it some language determining the time at which Spanish merchant vessels should be "in any port or places within the United States" to give them the right of being allowed until May 21st, 1898, for loading their cargoes and departing. There is no expression of any element of time in this connection to aid in the construction, but upon this

depends the cases of the "Catalina" and of the "Miguel Jover," which cleared from New Orleans the evening of April 21, 1898.

It is urged by the claimants that the intention of the proclamation was that the exemption should attach to all Spanish merchant vessels in harbor at the outbreak of the war, and that the words "at that date," or their equivalent, should be understood, while the counsel for the captors contends that there can be no retroactive effect of the proclamation, and the only word that could be understood is "now."

Which of these views is in harmony with the present view of nations and sanctioned by their recent practice?

Formerly at the outbreak of war nations lost no time in seizing enemy's shipping found in their ports, although they had entered in good faith in time of peace; but modern usage condemns such a breach of national good faith, and recent practice has been to give certain days of grace to shipping found within enemies' ports at the outbreak of war. In the Crimean war, in 1854, Russian vessels were allowed six weeks to leave British ports; in 1870, thirty days were allowed German vessels in French ports, and French vessels in German ports were allowed six weeks to leave. In 1897 (the Greeco-Turkish war), fifteen days were allowed by each nation for the vessels of the opposite nation to clear with impunity. In each of these

cases the immunity attached from the outbreak of the war.

53 Was it the intention of this proclamation to apply these days of grace to all vessels in ports of the United States at the outbreak of the war, or to those so in port on the day of the actual issuance of the proclamation? If the latter construction is accepted, it certainly would not be in accordance with the present views of nations nor sanctioned by their recent acts. It would leave a space of five days after the commencement of hostilities when, according to such views and practice, they might be considered exempt from seizure and could safely leave port, but upon issuing of such proclamation became subject to seizure. If they were safe according to the present rule of civilized nations, certainly the issuing of the proclamation at a later day, without declaring that it should be retrospective, should not make them liable.

In the proclamation of the 22nd of April the President had declared that thirty days' grace should be given to neutral vessels found in blockaded ports. Can it be believed that he intended to change the number of days of grace from thirty, already named in one proclamation, to twenty-five in this? If not, why is the 21st of May named? Is it not more reasonable to consider that the same number of days was intended; which, commencing at the outbreak of the war, would bring it to the 21st of May, the day named?

While it is true that the rule of construction generally is that statutes have no retrospective or retroactive effect, it is not without exceptions, and the principal question always is, what was the intention of the legislators?

It is contended that, the vessels being captured before the proclamation issued, the rights of the captors attached; but if it was the intention to exempt all in port at the outbreak of the war it is

54 not considered that the attaching of any such right should influence the decision in these cases. Giving the introductory language of the proclamation the force to which I consider it is entitled, I feel compelled to hold that the intention of the Executive was to fully recognized the recent practice of civilized nations and not to sanction or permit the seizure of the vessels of the enemy within the harbors of the United States at the time of the commencement of war or to permit them to escape from ports to be seized immediately on entering upon the high seas, and that the fourth article should be held to apply to all Spanish merchant vessels in the harbor of the United States upon April 21st, 1898, and exempt them from seizure. This will effect the release of the "Catalina" and the "Miguel Jover."

In regard to the cargoes of such vessels it is not to be considered that it should be the intention of the Executive or the policy of any nation to permit vessels to take in their cargoes up to a certain time and leave the port free and then have them seized, so that the cargoes should be liable to condemnation. What makes the free vessels makes the free cargoes, although it may be found to belong to the enemy.

The fifth article of this proclamation declares that any Spanish merchant vessel which prior to May 21st, 1898, shall have sailed from any foreign port bound to any port or place in the United States shall be permitted to enter such port and discharge her cargo and afterwards to depart without molestation. This raises a question which is not without difficulty in the cases against the "Pedro" and the "Guido."

The testimony shows that both these vessels were owned by a Spanish corporation of Bilboa, Spain, and were engaged in regular trade, with outward cargoes from European—particularly 55 Spanish—ports to Cuban ports to discharge, thence to some part of the United States, usually Pensacola, for a load of lumber for the return voyage. The "Guido" had sailed from Liverpool by way of Santander, Coruna, and La Pueblo, and was bound for Havana. In her regular course, after she had touched at that and several of the Cuban ports, she would have proceeded to Pensacola, and she had among her papers a bill of health for that place, but there was no charter-party or certainty of her going there. She had no cargo for that or any other port of the United States.

The "Pedro," a vessel of the same line, had sailed from Antwerp with cargo destined for several Cuban ports; she had been into Havana, discharged some cargo and taken other on board, and was bound to Santiago. After she had touched there and one or two other Cuban ports for which she had cargo, she was under charter to proceed to Pensacola to load for lumber for some port in Europe. She had on board no cargo for Pensacola.

It is further contended by the claimants of these two vessels that the fact that their ultimate destination, after stopping at other ports, was a port of the United States to take in cargo, brings them within the provisions of the fifth article of the proclamation as being ves-

sels which prior to April 21st, 1898, had sailed from a foreign port bound for a port or place of the United States, and extended and elaborate arguments were had and cases were cited upon the subject of continuing voyages and their termini. I do not consider that such a construction can be recognized as reasonable when applied to the circumstances of this case, nor that it can for a moment be considered to have been the intention of the proclamation when made.

The reason- for such exemption from seizure are twofold :
56 First, it excuses a vessel which, ignorant of the condition of war, comes directly within the power of the enemy, and is therefore to that extent a protection to commerce and tends to prevent a breaking up of commercial relations between nations upon the first, and perhaps unfounded, suspicion of unfriendly relations between them; secondly, as the material increase of a nation's possession is always desirable upon the outbreak of war, and the importations of foreign cargoes may well be considered to tend toward such increase, it is desirable to encourage this importation, although brought by ships of the enemy.

But neither of the reasons apply to the cases at bar. These vessels would have been informed of the condition of war long before approaching our shores. In fact, a state of war existed before the "Pedro" left Havana, and having no cargo to bring to this country, they were only coming to take property away and in the meantime carrying on commerce in the interest of the enemy between its ports and supplying it with necessary provisions with impunity.

It is also urged by the claimants of these vessels that although they were owned by a Spanish corporation of Bilbao, La Flecha, the general managers of which were Spanish citizens and resided at Barcelona, a large portion of the stock of this corporation was owned by subjects of Great Britain, who had a lien or *or* equitable ownership of the rest of the stock, so that in reality the vessels were neutral property and had only been put under the Spanish flag to take advantage of certain privileges given them in trading to the Spanish West Indies.

It has been repeatedly declared that the property of a house of trade established in an enemy's country is liable to condemnation as prize whatever may be the domicile of the partners,
57 and this principle will apply with much greater force to the property of a corporation duly incorporated and acting under the laws of an enemy's country, regardless of the domicile of the individual stockholders or any equitable interest neutrals might have in the stock. A mortgage or equitable lien upon the vessel itself, if held by a neutral, could not protect her from seizure, and much less can an equitable interest in the stock of a corporation which is the owner. These vessels were owned by a Spanish corporation, sailing under a royal Spanish patent, flying the Spanish flag, officered and manned by Spanish citizens, nearly if not quite all of whom were registered as members of the Spanish naval reserve, and they must be taken and considered as in all respect- property of enemy and subject to forfeiture.

The "Panama" sailed from New York before the 21st of April, 1898, and was upon the high seas at that time and at the time of capture. The fact that there had been no formal proclamation or declaration of war before she had sailed or at the time she was captured, or that she had at a recent date left a port of the United States, cannot be considered as exempting her from the liability of all enemy's property to capture unless coming directly within the language of the President's proclamation.

The practice of a formal proclamation before recognizing an existing war and capturing enemy's property has fallen into disuse in modern times, and actual hostilities may determine the date of the commencement of war, although no proclamation may have issued, no declaration made, or no action of the legislative department of the Government had. This date has been declared by the act

of Congress of April 25th, 1898, and by the proclamation
58 of the President of the next day, to have been April 21st, 1898, including that day, so that any Spanish property afloat captured from that time became liable to condemnation, unless exempt by the executive proclamation.

In the case of the "Buena Ventura" it is shown by the evidence that she cleared from Scranton, Miss., with permission to touch at Newport News for coal on her voyage to Rotterdam. Although she was to touch there for that purpose, it was not a port of discharge, nor was she from a foreign port, and her case clearly does not come within the language of the proclamation. Had she been captured approaching Newport News for the purpose of coaling, even then there might have been some opportunity for argument that the permission to touch had given her encouragement, and it should in justice furnish the same protection as to a vessel coming from a foreign port, but that was not the case. When captured, she must have been pursuing the same course she would have pursued had there been no intention to stop for coal, and neither such intention nor permission tended in any way to increase the liability of her capture; she was an enemy's vessel, found upon the high seas at the commencement of the war and not coming within the exceptions of the proclamation.

Her cargo was shipped by a citizen of the United States to a neutral port, consigned partly to the shipper's order and partly to a citizen of Great Britain, and is unquestionably either neutral or the shipper's property. The suggestion that it should be condemned, although neutral, because found in an enemy's vessel and at the time of the capture there had been no proclamation issued declaring it not subject to condemnation cannot be entertained for a moment. The policy and law declared in the executive proclamation is considered to be the law by which this court is gov-
59 erned, whether the capture took place before or after the proclamation was issued. It is the existing law by which rights must be determined, and in this matter there can be no possible question of construction or intention.

The cargoes of the "Pedro" and the "Guido" appear from the testimony and the papers found on board to have been mostly

shipped by neutrals to parties in the enemy's country. Such shipments are *prima facie* enemy's property and subject to condemnation, but such presumption can be overcome by evidence, and in those cases in which claims and test affidavits have been filed tending to show the ownership time will be given for further proof; but the property all being either perishable or subject to deterioration by delay, or such that the cost of keeping will be disproportionate to its value, an order of sale will issue and the claim stand against the proceeds of sale.

The "Panama," after touching at Havana, was bound for Vera Cruz, and a large portion of her cargo is shown to have been shipped to Mexico and consigned to residents, and, presumptively, citizens of that Republic. That is all *prima facie* neutral property and will be released. The rest, shipped by merchants in New York and consigned to parties in Havana, is presumably the property of the consignees, but, where claims and test affidavits have been filed combating that presumption, time for further proof will be given, as in the cases of the "Pedro" and the "Guido." When the property can be immediately restored to the claimants, it will be so ordered, but otherwise it will be sold, pending further proof, as the greater part, if not all, is liable to deterioration by the delay.

60

EXHIBIT "A" (from Ship's Documents).

No. 116.

Real Patente de Navegacion Mercantil.

Comandancia de Marina de Habana.

Don Alfonso XIII.

Por la Gracia de Dios y la Constitucion, Rey de Espana, y en su Nombre, y Durante su Menor Edad,

La Reina Regente del Reino.

Por cuanto he concedido permiso á D. Jose Serra y Font representante de la Ca. La Flecha, vecino y del comercio de Bilbao, para que el Vapor Guido, de su propiedad del folio 191 de la 5 a lista de embarcaciones de la inscripcion del puerto de Bilbao de 109' 70 de eslora 12' 50 de manga y 8. de puntal, pueda navegar y comerciar en todos las mares y puertos del Globo.

Por tanto, orden que, constando la pertencia de la embarcacion al referido D. Jose Serra y Font, ó á otro subdito espanol, el Comandante de Marina, sus subalternos ó cualquiera otro funcionario á quien corresponda, concurren á facilitarle lo que necesitare, asi por lo respectivo á su armamento, como por lo que mira á su tripulacion, de que debiera formase lista, y obligarse al Capitan que mande dicho buque á cuidar de su conservacion y responder de sus faltas, segun previenen las Ordenanzas de Marina, permitiendole salir á navegar y comerciar bajo las reglas establecidas.

Y mando á los Oficiales Generales ó particulares Comandantes de

61 escudra y bajeles á los Capitanes Generales de los Departamentos de Marina y demas autoridades de ella y otros cualesquiera Oficiales ó dependientes de la Armada; á los Capitanes y Comandantes Generales de distritos y provincias, á los autoridades civiles y judiciales de los puertos de estos dominios, y á todos los demas subditos espanoles á quienes correspondiere, no le pongan embarazo ni causen molestia ó detencion alguna, antes bien le auxilien ó faciliten lo que hubiere menester para su regular navegacion y legitimo comercio. Y á los subditos de Reyes, Principes y Republicas amigos y aliadas; á los Jefes, Gobernadores ó Comandantes de sus provincias, plazas, escuadras y bajeles, recomiendo que asimismo no le pongan impedimento á su libre navegacion, entrada, salida ó detencion en los puertos á los cuales deliberadamente ó por accidente se condujere, y le permitan ejercer en ellos su legitimo comercio, bastimentarse y proveerse de lo necesario para continuarla; á cuyo fin he mandado despachar esta Real Patente, la cual, firmada por Mi y refrendada por el Ministro de Marina, servira y tendra fuerza considerandose en todas circunstancias como exclusivamente inherente al Vapor Guido interin este buque se halle bajo el pabellon Espanol y no varie de capacidad y figura en el casco y aparejo.

Dado en Palacio á quince de Noviembre de Mil ochocientos ochenta y siete.

Por la Reina Regente.

(Ministerio de Marina.)

RAFIEL ROSARIOS.

62		Toneladas.
	Total	3.133' 01
	Tonelaje: Correspondiente á los descuentos.....	1.068' 40
	Neto	2.064' 61

Esta Real Patente de Navegacion Mercantil para todos los mares del Globo, numero 116 se expide por mi el infrascrito Comandante de Marina, en el dia de esta fecha, extendida á favor del Vapor Guido del folio 191 de la lista de embarcacinoes de esta Provincia naval, habiendo precedido el cumplimiento de todos los requisitos prevenidos en las disposiciones que rigen sobre esta materia, y con la obligacion de devolverlo ó estar á las resultas de su perdida ó extravio, y hacer en todo tiempo buen uso de el y no ejercitarse en el comercio ilícito.

Dado en Habana, á 1' de Abril de 1890.

M. MIRANDE.

NOTA.—Esta Patente debera contener siempre tantos sellos por valor de setenta reales vellon como periodos de tres anos cuente desde la fecha de su expedicion; bien entendido que dichos sellos deberan colocarse en todo el primer ano de cada periodo bajo la pena una multa de cinco reales vellon por cada tonelada de las que mida el buque, en caso de omision injustificable, y cuya se cargara al dueno del mismo.

Los sellos de que se trata seran precisamente los designados para este objecto en las Reales ordens vigentes.

63 EXHIBIT "B" (from Ship's Documents).

No. 271. Original. Port of Liverpool.

UNITED STATES — AMERICA :

Bill of Health.

I, W. J. Sulis, vice & deputy consul of the United States (the person authorized to issue the bill) at the port of Liverpool, do hereby state that the vessel hereinafter named cleared from this port under the following circumstances :

Name of vessel, Guido; nationality, Spanish; rig, schooner; master, Julian de Ormaechea; tonnage, gross, 3,133; net, 2,065 tons; iron or wood, steel; number of compartments for cargo, 4; for steerage passengers, none; for crew, 3; name of medical officer, none.

Number of officers, 3; number of members of officers' families, none; number of crew, including petty officers, 33; number of passengers, cabin, none; number of passengers, steerage, none; number of persons on board, all told, 36.

Port of departure, Liverpool.

Where last from, New Orleans.

Number of cases of sickness and character of same during last voyage, none.

Vessel engaged in Atlantic trade, and plies between Liverpool, Spain, Cuba, and the United States.

Sanitary condition of vessel, good.

Nature, sanitary history, and condition of cargo, water ballast, good.

Source and wholesomeness of water supply, Liverpool corporation, good.

64 Source and wholesomeness of food supply, Liverpool & Spain, good.

Sanitary history & health of officers & crew, good.

Sanitary history & health of passengers, cabin, —.

Sanitary health & history of passengers, steerage, —.

Sanitary history and condition of their effects, —.

Prevailing diseases at port and vicinity, —.

Location of vessel while discharging and loading—open bay or wharf—open bay.

Number of Cases and Deaths from the Following-named Diseases During the Past Two Weeks Ending 24th Instant.

Diseases.	No. cases.	No. deaths.	Remarks.
			(Any conditions affecting the public health existing in the port of departure or vicinity to be here stated. When there are no cases or deaths entry to that effect must be made.)
Yellow fever.....	None.	None.	
Asiatic cholera.....	"	"	
Cholera nostras or cholerine.....	"	"	
Smallpox.....	"	"	
Typhus.....	"	"	
Plague.....	"	"	
Relapsing fever...	"	"	

I certify that the vessel has complied with the rules and regulations made under the act of February 15, 1893, and that the vessel leaves this port bound for a port (unknown) in the United States of America, via Spain & Cuba (ports unknown).

Given under my hand and seal this 1st day of April, 1898.

[SEAL.]

(Signature of consular officer :) W. J. SULIS,

[SEAL.]

Vice & Deputy Consul of the United States of America at Liverpool.

Rec'd fee, \$5, or £1 0 3.

65 Endorsed: Consulate of the United States, Corunna, Spain,
April 8th, 1898. Sanitary condition of this port, good. For
original & duplicate. Rec'd fee, \$2.50. Julio Harmony, U. S.
consul.

Por no haber Consul de los Estados Unidos en esta plaza Certifico
que la salud publica, tanto en la localidad como en sus cercanias,
es completamente satisfactoria.

Santander 6 de Abril, 1898.

(Alcaldia Constitucional de Santander.)

El alcalde, JOSE DEL CINOL.

Form 1931a.

UNITED STATES OF AMERICA :

Bill of Health.

Port of Liverpool.

Name of vessel, Guido.

Name of master, Ormaechea.

From Liverpool, Spain, & Cuba.

To a port in the U. States.

Date of issue, 1st April, 1898.

66

EXHIBIT "C" (from Ship's Documents).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80147.

Certificate of Payment of Tonnage Duty.

(To be used in — cases under seals of collector & naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on the 7th day of Dec'b'r, eighteen hundred and ninety-seven, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other purposes," approved June 26, 1884, was paid on the Spanish S. S. Guido—Conzalegui, master—of Bilboa, by Melilla & Stoddard, as per American admeasurement, 2,065 tons, amounting to one hundred and twenty-three dollars and ninety cents.

The above payment was made on entry from Manchester, Eng., on the 7th day of Dec'b'r, 1897, being the 1st payment on entry in the year beginning Dec'b'- 7th, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st	Dec. 7, '97	2,065	6	\$123 90	New Orleans.
2nd.....					
3rd.....					
4th.....					
5th.....					

P. O. LABATUS,
*Naval Officer.*CALHOUN FLUKER,
D'y Collector.

67

EXHIBIT "D" (from Ship's Documents).

Art. 179, customs.

Regulations of 1892.

Cat. No. 491.

No. 80364.

Certificate of Payment of Tonnage Duty.

(To be issued in all cases under seals of collector & naval officer.)

U. S. CUSTOM-HOUSE, PORT OF NEW ORLEANS.

I hereby certify that on this 21st day of February, eighteen hundred and ninety-eight, the tonnage duty of six cents per ton, imposed by the provisions of section 14 of the act entitled "An act to remove certain burdens on the American merchant marine, and encourage the American foreign carrying trade, and for other pur-

poses," approved June 26, 1884, was paid on the Span. S/S Guido—Ormaechea, master—of Bilbao, by A. K. Miller & Co., as per American admeasurement, 2,065 tons, amounting to one hundred and twenty-three dollars and ninety cents.

The above payment was made on entry from Liverpool, England, on the 21st day of February, 1898, being the 2nd payment on entry in the year beginning December 7th, 1897.

Schedule of Payments.

Number.	Date.	Tons.	Rate.	Amount.	Port of entry.
1st.	Dec. 7, '97	2,065	6	\$123.90	New Orleans.
2nd.	Feb. 21, '98	2,065	6	123.90	New Orleans.
3rd.					
4th.					
5th.					

P. O. LABATUS,
Naval Officer.

HENRY M. FURMAN,
Sp'l D'y Collector.

68 United States District Court, Southern District of Florida.

I, Eugene O. Locke, clerk of said court, hereby certify that the foregoing document, pages numbered from one to sixty-seven, inclusive, constitute a true copy of the record and proceedings in the case of *The United States vs. The S. S. Guido & her cargo*, prize, lately adjudicated in said court and remaining on file and of record in my office.

Seal District Court of the
United States, South-
ern District of Florida.

In testimony whereof I have hereunto
set my hand and affixed the seal of said
court this twenty-third day of August,
A. D. 1898.

E. O. LOCKE, *Clerk*,
By LOUIS STARKE,
Deputy Clerk.

Endorsed on cover: Case No. 16,966. S. Florida D. C. U. S. Term No., 381. The Steamer "Guido," Julian de Ormaechea, claimant, appellant, vs. The United States. Filed August 26th, 1898.